

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

SUPERIOR COURT
DOCKET NO. 1572CR00128

COMMONWEALTH

v.

KEVEN SEME
Defendant

SUPERIOR COURT BARNSTABLE, SS	
Filed	JUL 26 2019
<i>Scott L. Nielsen</i> Clerk	

MOTION *IN LIMINE* TO EXCLUDE FROM EVIDENCE DEFENDANT'S
STATEMENTS OF JULY 9, 2015 - SUPPLEMENT

Counsel submits the attached transcript of a Motion to Suppress the July 9, 2015, statement referenced above. That Motion to Suppress was filed by prior counsel and heard and denied by the Court, Nickerson, J. Counsel had overlooked filing this record in the earlier filing, through inadvertence and neglect. The defendant continues to move this Honorable Court Order as excluded from evidence any reference or use of statements given by Defendant on July 9, 2015 as stated in the initial pleading.

THE DEFENDANT
By His/Her Attorney

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CERTIFICATE OF SERVICE: I, Edward Fogarty, certify I have caused a copy of the above to be served upon the Barnstable County District Attorney Office, attn. Sharon Thibeault. /s/ Edward Fogarty

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

VS.

DOCKET: 2015-128

KEVEN SEME,

Defendant

MOTION TO SUPPRESS

BEFORE THE HONORABLE ROBERT C. RUFO

APPEARANCES:

EDWARD LYNCH, ESQUIRE
Assistant District Attorney
Cape & Islands Division
For the Commonwealth.

JOHN CONNORS, ESQUIRE
238 N. Main Street
Fall River, MA 02720
For the Defendant.

BARNSTABLE SUPERIOR COURT
COURTROOM 1
November 7, 2016

DANIEL E. HORGAN, OCR; BARNSTABLE SUPERIOR COURT
(508)375-6666; E-mail:daniel.horgan@jud.state.ma.us

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
GERALD DONOVAN				
(By Mr. Lynch)	6			
(By Mr. Connors)		19		
MARK LYNCH				
(By Mr. Lynch)	30			
(By Mr. Connors)		34		

E X H I B I T S

NO.	DESCRIPTION	PAGE
1	Request form.	9
2	CD disk.	11
3	"	13
4	"	15
5	Rights form.	16

P R O C E E D I N G S

THE CLERK: Docket No. 15-128, Commonwealth versus Keven Seme.

THE COURT: Attorney Connors.

MR. CONNORS: Good morning, your Honor.

THE COURT: How are you?

MR. CONNORS: Very good. Thank you.

THE COURT: ADA Glenny?

MR. LYNCH: Lynch.

THE COURT: Oh, Lynch. What are we doing here today, Attorney Connors?

MR. CONNORS: We are on for a motion to suppress some statements that my client made to police at the house of correction in an interview.

THE COURT: Do you have witnesses?

MR. LYNCH: I could report, if Mr. Connors will allow me, that there were charges brought against this gentleman on the night of his arrest. He gave a statement. He was held at the Barnstable House of Correction.

He had a brief conversation with investigators on the 7th of July, and then another brief conversation on July 9th; and then had a more full conversation later on that same day of about two hours. I believe Mr. Connors is attacking essentially that two-hour conversation.

And all of these conversations, at least at the house of

correction, are on disk. So, if we did proceed today, the Government would be introducing those disks and then perhaps a little background information for the Court's findings.

And I believe the sole issue is voluntariness of that last conversation. So, I think if the Court wants to entertain the motion, I think we would be prepared to go forward today.

MR. CONNORS: I would be willing to go forward right now, your Honor.

THE COURT: All right. Well, I would like to read your submission first. Why don't we get through the rest of the list. I'm going to ask Attorney Connors to sign his memo because it's unsigned.

MR. LYNCH: The government does have an opposition as well.

THE COURT: You have an opposition? I need to read that as well. I have the affidavit from Mr. Seme signed.

(Defendant is present.)

MR. CONNORS: The originals, I know, are paper. But he resigned a copy.

THE COURT: Right. That's appended to that motion. All right. Further call. I'll read the motion and the opposition, and we'll have a hearing.

THE CLERK: Held for hearing.

(Recess in proceedings.)

THE CLERK: Further call, Commonwealth versus Keven Seme.

MR. CONNORS: Counsel.

1 THE COURT: Good morning again, Attorney Connors, ADA
2 Lynch.

3 MR. LYNCH: Good morning, Judge.

4 THE COURT: I've had a chance to read the motion and the
5 opposition. So, we'll bring out Mr. Seme.

6 MR. LYNCH: And Judge, if the Court made a finding that Mr.
7 Connors met his initial burden with requiring the government to
8 proceed and make an argument that the statement is voluntary
9 beyond a reasonable doubt, we would actually call two witnesses,
10 Gerry Donovan and a Mark Lynch from the house of correction,
11 just to sort of lay out a little bit of a background as to what
12 the disks represent that the government intends to introduce.

13 THE COURT: I think he's met his burden as far as that
14 threshold. So, I'm going to ask you to produce the witness.

15 MR. LYNCH: Okay.

16 THE COURT: So, he'll take a seat right here with Attorney
17 Connors.

18 (Defendant moved to counsel table.)

19 MR. LYNCH: Should I proceed?

20 THE COURT: ADA Lynch.

21 MR. LYNCH: I want to call Detective Donovan.

22 THE COURT: So, just for a point of clarification, Attorney
23 Connors, ADA Lynch, we have a Trooper Donovan and Detective
24 Donovan? Is that right?

25 MR. LYNCH: Well, I was informed this morning that the

1 proper description of this gentleman is Trooper Donovan,
2 although he's an investigator. He's one and the same.

3 THE COURT: I wasn't clear. Because at some point, he's
4 referred to as Trooper Donovan; and at other points, he's
5 referred to as Detective Donovan. And there could be two
6 Donovans.

7 MR. LYNCH: No, he's one and the same, Judge.

8 THE COURT: All right. That just clarifies it. All right.

9 GERALD DONOVAN, Sworn.

10 DIRECT EXAMINATION

11 BY MR. LYNCH:

12 Q Sir, could you state your full name? And spell your last
13 name, for the record?

14 A Gerald Donovan, D-O-N-O-V-A-N.

15 Q Who are you employed by?

16 A The Massachusetts State Police.

17 Q In what capacity?

18 A As a trooper.

19 Q How long?

20 A Just over ten years.

21 Q And before working for the State Police, who did you work
22 for?

23 A I worked for the Falmouth Police Department.

24 Q How long?

25 A Four years.

1 Q And before that?

2 A I was a drill instructor at a DYS staff secured boot camp.

3 Q I want to draw your attention to the date of June 19th,
4 2015 and ask you whether on that date you became involved in an
5 investigation?

6 A I did.

7 Q And what was the nature of the investigation?

8 A It was a homicide investigation.

9 Q All right. And in sum, was there a suggestion that
10 somebody was injured in some way in the Town of Hyannis?

11 A Yes.

12 Q Can you describe that, please?

13 A A young man named David Colon was murdered, and the
14 investigation ensued.

15 Q And what was the nature of the actual crime? What occurred
16 to him?

17 A David Colon was shot in the head in Hyannis, and
18 subsequently two people were placed into custody.

19 Q And he obviously died as a result of his injuries?

20 A He died as a result of his injuries.

21 Q And who were the two people that were placed in custody?

22 A Kyle Walker and Keven Seme.

23 Q And the person that -- or at least one of the persons that
24 you have just identified, do you see that person in court today?

25 A I do.

1 Q Could you please point to him, and describe what he's
2 wearing?

3 A Mr. Seme is wearing a blue dress shirt and glasses.

4 MR. LYNCH: Your Honor, may the record reflect the witness
5 has identified Mr. Seme?

6 THE COURT: As the Trooper has so testified.

7 BY MR. LYNCH:

8 Q Now, at the time of Mr. Seme's arrest, were you aware of
9 his age?

10 A Yes.

11 Q How old was he?

12 A He was 19 years old.

13 Q And at the time of his arrest, did he have a conversation
14 at the Barnstable Police Department?

15 A He did.

16 Q And at some point in time during this investigation, was he
17 charged and arraigned for allegations involving Mr. Colon's
18 murder?

19 A He was.

20 Q And where was he held?

21 A He was held at the Barnstable Correctional Facility.

22 Q Now, I want to draw your attention to some 19 days later.
23 Did you receive some communication from the Barnstable House of
24 Correction?

25 A I did.

1 Q And what was the nature of the communication?

2 A I received an e-mail from Sergeant Mark Lynch of the
3 Barnstable County Correctional Facility indicating that Mr. Seme
4 had wanted to speak to investigators.

5 Q I'm showing you a document. Do you recognize that?

6 A I do.

7 Q What is that?

8 A This is an inmate request that an inmate will fill out and
9 give to an employee of the correctional facility with whatever
10 it is that they're requesting.

11 Q And is this the document that was forwarded to you from
12 Mark Lynch?

13 A It was.

14 MR. LYNCH: Your Honor, I'd ask that this be marked and
15 moved as an exhibit.

16 THE COURT: Attorney Connors?

17 MR. CONNORS: No objection, your Honor.

18 THE COURT: That's Exhibit No. 1.

19 (Document marked as Exhibit No. 1.)

20 BY MR. LYNCH:

21 Q Now, as a result of receiving this document on or about
22 July 7th, 2015, did you do something?

23 A I did.

24 Q What did you do?

25 A I went to the Barnstable County Correctional Facility to

1 speak with Mr. Seme as per his request.

2 THE COURT: What was the date again? I'm sorry.

3 THE WITNESS: July 7th, your Honor.

4 THE COURT: July 7th of 2015?

5 THE WITNESS: Yes, your Honor. 2015. Sorry.

6 BY MR. LYNCH:

7 Q And who did you go with?

8 A That day, I went with Trooper Fries.

9 Q And where did you go to?

10 THE COURT: How do you spell the trooper's name? I'm
11 sorry.

12 THE WITNESS: F-R-I-E-S, your Honor.

13 BY MR. LYNCH:

14 Q And where did you go to?

15 A We go to the Barnstable County Correctional Facility; and
16 we speak with Sergeant Mark Lynch, who is inner perimeter
17 security. And we go into the interview room, which is in that
18 portion of the facility.

19 Q And you did that on this day?

20 A Yes.

21 Q And it was you and Fries?

22 A Yes.

23 Q And who, if anybody, did you meet with on that day?

24 A We met with Mr. Seme.

25 Q The Defendant?

1 A Yes.

2 Q And how long did this communication take place?

3 A It was very short.

4 Q Now, I'm going to show you a disk and ask you if you had a
5 chance to review the contents of it?

6 A I have.

7 Q And what is that?

8 A This is just an audio and video of the interview that took
9 place between myself, Trooper Fries and Keven Seme as per his
10 request. But he didn't want to speak to us.

11 MR. CONNORS: No objection.

12 MR. LYNCH: At this point, Judge, I would ask that this be
13 marked and moved as an exhibit.

14 THE COURT: Exhibit 2.

15 (Disk marked as Exhibit No. 2.)

16 MR. LYNCH: And at this stage, Judge, respectfully I
17 thought we'd just be introducing all the disks; and the Court
18 would just look at them at their leisure, if that's what would
19 be appropriate?

20 THE COURT: Well, Attorney Connors may have questions on
21 Cross-Examination about it. So, I think we have to play it in
22 the courtroom.

23 MR. LYNCH: Okay.

24 THE COURT: Just because of the nature of the offense, I
25 want to give him a full hearing on this.

1 MR. CONNORS: Thank you.

2 MR. LYNCH: Well, then we're going to have to produce some
3 disks -- or I guess a computer or laptop to do that, Judge. But
4 can I proceed on with what I'm doing now?

5 THE COURT: Yes, absolutely. If you can line up Mr.
6 Barrows, that would be helpful.

7 (Note: Mr. Barrows is an IT person that works for the DA's
8 office.)

9 THE CLERK: Exhibit 2 is marked.

10 BY MR. LYNCH:

11 Q Now, as a result of that conversation, what happened next?

12 A As a result of that conversation with Keven Seme, he
13 indicated to us that he didn't want to speak to us on his
14 current case; that he wanted to speak to us on other things that
15 he knew.

16 So, I went and spoke with Detective Mark Butler at the
17 Barnstable Police Department, who was also an agent with the DEA
18 Task Force. And Mark Butler and I went back and spoke with Mr.
19 Seme.

20 Q So, I want to draw your attention to the date of
21 July 9th, 2015 at approximately 1:49 p.m. Did you go back to
22 the Barnstable House of Correction on that day?

23 A I did.

24 Q And who did you go with?

25 A Detective Mark Butler.

1 Q And who did you meet with?

2 A I met with Mr. Seme again.

3 Q And was it in the same room or the same area of the house
4 of correction?

5 A The same place.

6 Q All right. And how long did this conversation take?

7 A This was a short conversation.

8 Q I'm going to show you a disk and ask you if you recognize
9 it?

10 A I do.

11 Q And what is that?

12 A This is the first interview that day with Keven Seme.

13 MR. LYNCH: Your Honor, I'd ask that this be marked and
14 moved as an exhibit.

15 MR. CONNORS: No objection, your Honor.

16 THE COURT: So, the first interview's with Detective
17 Butler -- just so I can clarify it, correct?

18 THE WITNESS: On July 9th. Yes, your Honor.

19 (Disk marked as Exhibit No. 3.)

20 THE COURT: That's Exhibit 3?

21 THE CLERK: Exhibit 3, so marked.

22 BY MR. LYNCH:

23 Q And how long did that conversation take?

24 A It was a short conversation.

25 Q And what was the result of the conversation?

1 A We ended up leaving the interview room.

2 Q At some point in time, did you return?

3 A We did.

4 Q About how long a period of time was it between you leaving
5 that you returned back to the interview room?

6 A Ten to 15 minutes.

7 Q And how did you know to return back to the room?

8 A Either Sergeant Lynch or Sergeant Fernandes told us to come
9 back; that Keven Seme had changed his mind.

10 Q And so, did you go back to the same room?

11 A We did.

12 Q Now, I want to draw your attention to approximately -- that
13 same date, July 9th, 2015 at approximately 2:01 p.m. Were you
14 present back in the room?

15 A Yes, we were.

16 Q And who was present then?

17 A It was myself, Detective Mark Butler and Keven Seme.

18 Q And was there further conversation?

19 A There was.

20 Q All right. How long was this conversation all together?

21 A That was under two hours.

22 Q Now, I'm showing you a disk and ask you if you recognize
23 it?

24 A I do.

25 Q What is that?

1 A This is the audio and video of the second interview with
2 Keven Seme.

3 Q On the date of July 9th, 2015?

4 A On the date of July 9th, 2015.

5 MR. LYNCH: I'd ask that this be moved and marked as an
6 exhibit.

7 THE COURT: Attorney Connors?

8 MR. CONNORS: No objection, your Honor.

9 THE COURT: That's Exhibit 4.

10 (Disk marked as Exhibit No. 4.)

11 THE CLERK: Exhibit 4, so marked.

12 BY MR. LYNCH:

13 Q Now, during this conversation -- or earlier in the
14 conversation, was there some discussion concerning rights?

15 THE COURT: Concerning what? I'm sorry.

16 MR. LYNCH: Rights.

17 THE COURT: Rights?

18 A Yes.

19 Q Describe that, please?

20 A Detective Mark Butler read Keven Seme his Miranda rights.

21 Q And did he use something to do that?

22 A He used a Miranda warnings form.

23 Q And that interaction is all contained on the disk --

24 A It is.

25 Q -- that's been marked and entered as Exhibit 4?

1 A Yes, it is.

2 Q And this process involving the form, did Mr. Seme
3 participate in filling out the form?

4 A He did.

5 MR. CONNORS: No objection, your Honor.

6 Q I'm going to show you a document. Do you recognize it?

7 A I do.

8 Q What is that?

9 A This is the Barnstable Police Department Miranda rights and
10 waiver form.

11 Q And where was that form executed?

12 A In the office near IPS at the Barnstable County
13 Correctional Facility.

14 Q And who was present during that execution?

15 A Myself, Detective Mark Butler and Keven Seme.

16 MR. LYNCH: Judge, at this point in time, I'd ask that this
17 be marked and moved as an exhibit?

18 THE COURT: No objection? So, that will be Exhibit 5.

19 MR. CONNORS: No objection, your Honor.

20 THE COURT: Very good.

21 (Rights form marked as Exhibit No. 5.)

22 THE CLERK: Exhibit 5 is marked.

23 BY MR. LYNCH:

24 Q Trooper, as I look here at the form, are there indications
25 of initialing on the form?

1 A There is.

2 Q And who initialed the form?

3 A Keven Seme.

4 Q In what way?

5 A With a "K" and an "S."

6 Q And where did he initial the form?

7 A At the end of each period of his rights.

8 Q And what rights were those? Could you state them, please?

9 A "You have the right to remain silent. If you choose to
10 speak, anything you say may be used against you in a court of
11 law or other proceeding.

12 "You have the right to consult with a lawyer before
13 answering any questions; and you may have him or her present
14 with you during questioning. If you cannot afford a lawyer and
15 you want one, a lawyer will be provided for you by the
16 Commonwealth at no cost to you.

17 "You may also waive your right to counsel and your right to
18 remain silent, and you may answer any question or make any
19 statement you wish. If you decide to answer questions, you may
20 stop at any time.

21 "Do you understand each of these rights as I have explained
22 them to you?"

23 Q And he initialed each of those rights?

24 A He did.

25 Q All right. And he signed that form?

1 A He did.

2 Q All right. And is there another form as it relates to
3 waiver?

4 A Yes, there is.

5 Q And was that reviewed and discussed with him as well?

6 A It was.

7 Q And did he sign and date that in front of you?

8 A He did.

9 Q All right. And are there other signatures contained on the
10 form?

11 A There is.

12 Q And whose signatures are those?

13 A My signature and Detective Mark Butler's.

14 Q And those were marked by you at the time of this
15 conversation?

16 A That's correct.

17 Q And again, the conversation then that proceeded lasted
18 approximately an hour and 55 minutes?

19 A That's correct.

20 Q Now, during the period of time that you sat with Mr. Seme
21 on the date of July 9th, 2015 at approximately 2:00 o'clock --
22 for the next hour and 55 minutes, did you make observations of
23 his person?

24 A I did.

25 Q Did you notice or make any observations concerning whether

1 or not he was under the influence of drugs or alcohol?

2 A I didn't feel that he was under the influence of any type
3 of drug or alcohol.

4 MR. LYNCH: Judge, at this point in time then, I guess I
5 would take a break and set up and play it. I don't mind doing
6 that, if the Court could give me 10 or 15 minutes?

7 THE COURT: Well, that's fine. Why don't we do this, if
8 Attorney Connors doesn't mind. Why don't you start your Cross
9 right now, without any prejudice to the Commonwealth or the
10 Defense. So, at least we can get some of the initial
11 Cross-Examination done while we're waiting for the laptop and
12 the screen to be brought in.

13 MR. CONNORS: That would -- I would, your Honor.

14 THE COURT: All right. Unless you object to that, Attorney
15 Connors?

16 MR. CONNORS: Pardon?

17 THE COURT: Unless you object to that?

18 MR. CONNORS: No, I don't object to that, your Honor.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. CONNORS:

22 Q When was the first time you went over there to talk to him?

23 A July 7th.

24 Q July 7th. And on July 7th, you said it was short?

25 A It was.

1 Q Why was it short?

2 A It was short because when we spoke with Mr. Seme, he didn't
3 want to speak on his current cases; that he wanted to speak
4 about drug dealers, taking down drug dealers.

5 Q And he said that his lawyer told him not to speak about his
6 current case, correct?

7 A He did.

8 Q And he was assured that you guys weren't going to ask him
9 about his current case?

10 A That's correct.

11 Q And how long before you ended the session?

12 A The first interview on July 7th?

13 Q Yeah, the first interview?

14 A It was short. I don't know how many minutes, but it wasn't
15 long.

16 Q All right. Then you went back again at some other point.
17 Was it July 9th?

18 A July 9th.

19 Q Yeah.

20 MR. CONNORS: I apologize for the motion, your Honor. I
21 believe I wrote July 19th on the face of the motion, but it
22 was July 9th.

23 THE COURT: You did.

24 MR. CONNORS: It was July 9th.

25 THE COURT: I've got it.

1 BY MR. CONNORS:

2 Q And on July 9th, you met him twice?

3 THE COURT: Just for clarification, all that -- July 19th
4 is in the title of the motion, but you got it right in the body
5 of the motion.

6 MR. CONNORS: Yes, it was in the heading. Yes. I'm sorry.

7 THE COURT: No, I figured that out.

8 BY MR. CONNORS:

9 Q You saw him twice that day?

10 A We did.

11 Q And you went there the first time to talk to him --

12 A That's correct.

13 Q -- at the jail?

14 A Yes.

15 Q And that was short?

16 A And that was short.

17 Q Because at that time, he told you that he wasn't going to
18 talk about his present case?

19 A Correct.

20 Q He said that if you were going to talk to him about his
21 present case, he wanted his lawyer present?

22 A I think he said his lawyer didn't want him to talk to
23 anybody. But along those lines, yes.

24 Q And then at some point, you went back?

25 A We did.

1 Q And he talked to you again?

2 A He did.

3 Q And he said at that time, I don't -- I'm not going to talk
4 about my case. My present case.

5 A Correct. And we told him that, too.

6 Q And at some point, you gave him a Miranda warning and had
7 him sign?

8 A We did.

9 Q But prior to that Miranda warning, didn't you ask him about
10 his cellphone?

11 A During the first interview.

12 Q And with the cellphone, that would have to do with this
13 case, wouldn't it?

14 A Yes. It could possibly, yes.

15 Q Which he said he didn't want to talk about?

16 A That's correct.

17 Q But you asked him anyway?

18 A I did.

19 Q And the second interview, he said that he was -- he was
20 looking to give you stuff outside of his case?

21 A That's correct.

22 Q And he didn't want to talk about anything regarding his
23 case?

24 A That's correct.

25 Q And you got -- you officers -- you and officer -- was it

1 Butler?

2 A Detective Butler, yes.

3 Q Detective Butler? You and Detective Butler assured him
4 that you weren't going to touch on his case, correct?

5 A That's correct.

6 Q And that nothing that he told you then was going to affect
7 his case?

8 MR. LYNCH: Objection.

9 THE COURT: No, overruled. He can ask.

10 A We told him we wouldn't talk about his case.

11 Q Yeah. And that none of this was going to affect his case?

12 A I don't remember saying none of it would affect his case.
13 We told him we wouldn't talk about his case.

14 Q You wouldn't talk about his case. So, he was under the --
15 he was under -- I'm sorry?

16 MR. LYNCH: No, go ahead.

17 Q He expressed to you that he did not want any of this to
18 affect his present case?

19 A Yes.

20 Q And he was assured by you that that was the case?

21 A I told him that when -- anytime that we got near his
22 current case, we would stop him.

23 Q Okay.

24 A Which we did.

25 MR. CONNORS: I think at this point, your Honor -- I think

1 if we can set it up --

2 THE COURT: All right. Would you see if Mr. Barrows --

3 MS. BRIGHT: Mr. Barrows has retrieved the laptop. He's
4 just getting the big screen, your Honor. It will just be a
5 moment.

6 THE COURT: All right. Thank you.

7 MR. LYNCH: If we want to take a break and move on to Mark
8 Lynch, we could probably do him in the meantime and then just
9 finish up with --

10 MR. CONNORS: That's fine.

11 THE COURT: All right. Do you have another case, Attorney
12 Connors?

13 MR. CONNORS: Pardon?

14 THE COURT: Do you have another case?

15 MR. CONNORS: No.

16 THE COURT: Okay.

17 MR. LYNCH: I'm just trying to fill up the Court's time.
18 But we'll wait, Judge.

19 THE COURT: Yeah, let's just suspend for a moment because I
20 have a couple of probation matters. Would you mind just
21 waiting, Trooper?

22 THE WITNESS: Not at all, your Honor. Thank you.
23 (Recess in proceedings.)

24 THE COURT: Okay. Bring the trooper back in, please.

25 THE CLERK: Commonwealth versus Keven Seme.

1 (Witness resumed the stand.)

2 THE COURT: Did we lose you, Ned?

3 MR. LYNCH: I got locked out.

4 THE COURT: Okay. All right. So, we're going to continue
5 on now with the motion to suppress on Mr. Seme. Attorney
6 Connors. Mr. Seme is present. Trooper Donovan is present. ADA
7 Lynch.

8 MR. LYNCH: Judge, I'm inclined now to play what has been
9 marked as Exhibit 2 for the Court's review as well as the
10 Defendant's.

11 THE COURT: Perfect.

12 MR. LYNCH: Could Trooper Donovan sit in the chair, if
13 that's --

14 THE COURT: He sure can.

15 (Witness sat in jury box.)

16 THE COURT: If he needs to view the video, he can actually
17 sit beside you. Do you want to see the video?

18 THE WITNESS: I'll move, your Honor.

19 THE COURT: Sit right beside ADA Lynch. It's going to be
20 the subject of Cross-Examination.

21 (Video played.)

22 MR. LYNCH: Just for the record, Judge, that would have
23 been what was marked as Exhibit No. 2. And the Government would
24 now proceed to play Exhibit 3.

25 THE COURT: I got it. First of all, any questions on

1 Cross-Examination for the Trooper on Exhibit 2?

2 MR. CONNORS: No.

3 THE COURT: All right. We can go ahead then on Exhibit 3.

4 MR. LYNCH: As I indicated, Judge, it does take some time
5 for the player to download for each of the interviews before it
6 actually plays.

7 THE COURT: No problem.

8 (Video played.)

9 MR. LYNCH: For the record, Judge, that would be Exhibit 3.

10 THE COURT: Attorney Connors, any questions on
11 Cross-Examination with respect to Exhibit 3?

12 MR. CONNORS: No questions, your Honor.

13 THE COURT: All right.

14 (Conversation with the Clerk off the record.)

15 THE COURT: Tom, while we're waiting for this to queue up,
16 why don't we call the Shabazz case.

17 (Recess in proceedings.)

18 THE COURT: Okay. Back on Mr. Seme. What disk is this?

19 MR. LYNCH: Judge, the Commonwealth at this point will be
20 playing what has been marked as Exhibit 4.

21 THE COURT: All right. Thank you.

22 (Video played.)

23 THE COURT: Just mark that, Mr. Barrows, and we'll pick it
24 up right after lunch. All right. All right, Attorney Connors?

25 MR. CONNORS: Yes, your Honor.

1 THE COURT: So, we'll pick it up right at the luncheon
2 recess. I have two bails. We should be able to conclude the
3 playing of the DVDs this afternoon and hopefully conclude the
4 motion hearing. All right. We'll be in luncheon recess.
5 (Recess in proceedings.)

6 THE CLERK: Commonwealth versus Keven Seme. Further
7 hearing.

8 THE COURT: All right. We're going to pick up on the
9 playing of Exhibit 4 where we left off. And just for the
10 purposes of the record, what was the time, Mr. Barrows, when we
11 left off?

12 MR. BARROWS: 2:31:36.

13 THE COURT: Thank you very much. We'll bring it forward
14 from there. Go ahead.

15 (Video played.)

16 THE COURT: ADA Lynch, I'm going to have you stop it right
17 there because I need to do a ten minute bail review downstairs.
18 And I'll come right back and finish this, and I'll hear you on
19 argument, all right? So, just a ten minute recess. Just mark
20 the time that we're stopping it so we can pick it up right from
21 there.

22 MR. LYNCH: 3:39:17, Judge.

23 THE COURT: Thank you.

24 (Recess in proceedings.)

25 (Defendant present.)

1 THE COURT: Good afternoon again, Attorney Connors, ADA
2 Lynch. Mr. Seme is present. We're going to pick up where we
3 left off. And I apologize for the interruptions. I had to
4 conduct the video conference bail because the sheriff's
5 department has a count issue if we don't do it at a particular
6 time or before that afternoon count. So, that's what I did, and
7 now I'm back. And at what point did we leave off?

8 MR. LYNCH: Judge, we left off the tape or the disk at
9 39:17. 3:39:17.

10 THE COURT: Do you know approximately how much further we
11 have on the tape?

12 MR. LYNCH: Approximately ten minutes.

13 THE COURT: Perfect. All right. Why don't we start it up
14 from there. Is that all right with you, Attorney Connors?

15 MR. CONNORS: Yes, your Honor.

16 THE COURT: Very good.

17 (Video played.)

18 THE COURT: All right. Attorney Connors, do you have any
19 questions in Cross-Examination for Trooper Donovan as a result
20 of the playing of Exhibit 4, the so-called July 9th, 2015
21 interview that lasted one hour and 55 minutes?

22 MR. CONNORS: Just one or two questions.

23 THE COURT: All right.

24 (Witness resumed the stand.)
25

CROSS-EXAMINATION, CONTINUED

BY MR. CONNORS:

Q You knew when he -- when Keven Seme gave you this interview that he did not want this to affect his ongoing case, correct?

A He mentioned that for the information he gave us about Brockton, he didn't want that information getting out.

Q But he did not want the information he gave you on that video to affect his open case here?

A Right. We didn't talk about his open case.

Q When he came to something like talking about his co-D, did you stop the interview?

A We didn't stop the interview.

Q When he talked about possible access to guns, did you stop the interview?

A No, we didn't stop the interview.

MR. CONNORS: No further questions, your Honor.

THE COURT: All right. ADA Lynch?

MR. LYNCH: Nothing further, Judge.

THE COURT: Thank you. You can step down, Trooper. Thank you.

THE WITNESS: Thank you, your Honor.

MR. LYNCH: Judge, I have one other witness to call briefly, a Mark Lynch from the Barnstable House of Correction.

THE COURT: All right.

MARK LYNCH, Sworn.

1 DIRECT EXAMINATION

2 BY MR. LYNCH:

3 Q Sir, could you state your full name? And spell your last
4 name, for the record?

5 A Mark Lynch, L-Y-N-C-H.

6 Q And who are you employed by?

7 A I'm a sergeant for the Barnstable County Sheriff's Office,
8 Special Operations Unit.

9 Q And what are your duties and responsibilities?

10 A We are the primary investigative function for the
11 correctional facility.

12 Q How long have you worked for the sheriff's department?

13 A It going to be 13 years come January.

14 Q And with regards to your involvement within the sheriff's
15 department, are you familiar with inmate requests and how those
16 are made through the system?

17 A Yes.

18 Q Can you describe that to the Judge, please?

19 A There's a form, it's called an inmate request form.

20 They're located within the housing units inside the correctional
21 facility. Basically they're issued out so if an inmate has a
22 request or they want to come in contact with somebody, they can
23 submit that form.24 They're generally readily available inside the housing
25 units. They'll get the form, fill it out. Once it's complete,

1 if the unit officer can't handle the task on that form, they'll
2 drop it in the unit mailbox. From there, it gets disbursed from
3 the midnight shift when they pass out the mail; and it gets
4 directed to the appropriate authority, wherever the request
5 would be titled to.

6 Q Now, are you familiar with the folks that are housed within
7 the house of correction? Do you know them? For the most part?

8 A Yes. Generally, yes.

9 Q Now, I want to draw your attention back to July 7th of
10 2015. Are any of the persons who were housed or inmates within
11 the house of correction, do you see any of them in court today?

12 A Mr. Seme.

13 Q Can you point to him and describe what he's wearing?

14 A A blue shirt, it looks like a button-up, underneath a
15 sweatshirt.

16 MR. LYNCH: Your Honor, may the record reflect that the
17 witness has identified the Defendant?

18 THE COURT: As the witness has testified to.

19 BY MR. LYNCH:

20 Q And I want to draw your attention back to that date of
21 July 7th, 2015. At or about that time, was there a request
22 made by Mr. Seme?

23 A I don't know the specific date, but there was a request
24 received.

25 Q I'm going to show you what's been marked as Exhibit 1 and

1 ask if you recognize that?

2 A Yes.

3 Q What is that?

4 A This is one of the request forms that are inside the
5 housing units that was submitted. We received that in special
6 operations, and I forwarded this off. Due to the -- due to the
7 nature of the case --

8 Q And so, describe how you received that?

9 A It was submitted into the special operations mailbox from
10 the midnight shift when they dispensed the mail that evening.
11 So, when I was processing the mail submitted from that box, I
12 came across this and --

13 Q Right. Is that done daily?

14 A It is done daily, yes.

15 Q And when you come across that item -- or when you came
16 across that item, what did you do with it?

17 A I scanned it into the machine; and I forwarded it off to, I
18 believe, Trooper Donovan.

19 Q And was that done at or about the time you first received
20 it?

21 A I can't tell you if it was done immediately, but it was
22 definitely done relatively close to the time it was received.

23 Q So, ballpark? About how great a period of time?

24 A I'd say probably within a day because stuff like this, we
25 just forward right off once we, you know, determine where we

1 need to go with it.

2 Q So, respectfully as it relates to Exhibit 1, when that was
3 received, within a day's period of time, that was brought to
4 another person's attention, correct?

5 A As far as another investigating agency?

6 Q Yes.

7 A Yes.

8 Q And who would that be?

9 A That would be the State Police.

10 Q And do you recall how you made the State Police aware of
11 it?

12 A I believe it was by e-mail. I may have had a phone call,
13 but I know I forwarded it off in an e-mail.

14 Q Do you remember the exact date of the e-mail?

15 A No, I don't.

16 Q Would there be anything that would refresh your memory as
17 to the date that that e-mail was sent off?

18 A If you had a copy of the e-mail maybe.

19 Q I'm just going to show you a document and just ask if you
20 would read the body of it, please.

21 A It's starts at the top --

22 Q Just read it to yourself.

23 (Witness complied with request.)

24 Q Now, does that refresh your recollection as to when you
25 communicated with Trooper Donovan about the request that you

1 received?

2 A Yes.

3 Q And what date was that?

4 A July 7th.

5 Q All right. And again, that's within 24 hours of the
6 request actually being made, correct?

7 A I would have to look at the specific date on that request,
8 but I would assume so.

9 Q Well, don't assume. Can you tell from this? I want to
10 show you what's been marked as Exhibit 1.

11 A There's no date besides the Exhibit 1 on there for 11/7.
12 So, I would say that it is within the same timeframe.

13 Q But I'm talking about from the point in time the request
14 was made to the information that was sent to Donovan, about how
15 great a period of time was that approximately?

16 A I would say within 24 hours.

17 MR. LYNCH: No further questions.

18 THE COURT: Attorney Connors?

19 MR. CONNORS: Yes.

20 CROSS-EXAMINATION

21 BY MR. CONNORS:

22 Q You say that you just found that in a box?

23 A I didn't just -- excuse me. I didn't just find it in the
24 box. That was placed in my box from the midnight shift. When
25 they collect the mail, they place those where it has to go. So,

1 it was titled, "To Special Operations." So, I retrieved it from
2 my special operations mailbox.

3 Q Do you know who put it in the box?

4 A I don't know specifically who. It was somebody assigned to
5 the midnight shift because they processed that.

6 Q Do you know who might have talked to Keven Seme prior to
7 that being placed in your box?

8 A No.

9 Q Did you ever talk to Keven Seme about this at all?

10 A We may have called him down the morning of. I can't recall
11 if it was myself or my partner.

12 Q So, you don't remember?

13 A I don't remember.

14 Q And so, you don't know who advised him or what he -- or
15 what advice he might have gotten, or from whom when he filled
16 that out?

17 A No.

18 MR. CONNORS: No further questions, your Honor.

19 THE COURT: Anything else, ADA Lynch?

20 MR. LYNCH: Nothing further, Judge.

21 THE COURT: Thank you, Sergeant. You can step down, sir.

22 THE WITNESS: Thank you.

23 MR. LYNCH: The Government rests.

24 THE COURT: All right. Attorney Connors, any evidence?

25 MR. CONNORS: Pardon?

1 THE COURT: Do you have any evidence you want me to
2 consider?

3 MR. CONNORS: No, your Honor.

4 THE COURT: All right. So, why don't I hear from you.

5 MR. CONNORS: Well --

6 THE COURT: Well, before you do that, let me just make sure
7 that I understand the nature of your motion. So, you filed a
8 motion to suppress the July 9th, 2015 statement contained in
9 Exhibit 4.

10 MR. CONNORS: Yes, your Honor.

11 THE COURT: Okay. So, I did listen to the two other audio
12 DiGiambattista-type interviews, that being Exhibits 2 and 3.
13 Exhibit 3 contains some information about a question posed to
14 your client with respect to whether or not he owned a cellphone.

15 MR. CONNORS: Yes, your Honor.

16 THE COURT: So, you are not contesting that?

17 MR. CONNORS: Well, yes, your Honor, I'm contesting the
18 whole string of events which --

19 THE COURT: I thought you were focused on the two-hour
20 interview. But go ahead. I'm listening.

21 MR. CONNORS: And that may be my error in drafting.

22 THE COURT: Okay.

23 MR. CONNORS: But I look at this as a continuing event.
24 They go in. They talk to him. He says, you know, I wanted to
25 talk to you, but I don't want anything to do with my case to be

1 talked about.

2 And they say, Well, then we're going to have to get
3 somebody else.

4 And on the second day -- and that July -- so, I believe
5 those other two interviews are both on July 9th.

6 THE COURT: They are.

7 MR. CONNORS: Including the one that he asks about the
8 cellphone.

9 THE COURT: Right. The cellphone starts at 1:49, according
10 to my notes.

11 MR. CONNORS: Correct. And again they go in. He asked
12 that question before the Miranda. And I believe that that's
13 improper, No. 1. And No. 2, it's made clear that he does not
14 want to talk about anything affecting his open case. He's going
15 to give them information, but nothing that affects his open
16 case. They come back a third time and do the hour and a half
17 interview.

18 THE COURT: An hour and 55 minutes.

19 MR. CONNORS: An hour and 55 minute interview.

20 THE COURT: I know, because I recorded the times. Go
21 ahead.

22 MR. CONNORS: You have to look at the totality of the
23 circumstances here.

24 THE COURT: For sure.

25 MR. CONNORS: They are taking somebody who is telling them

1 specifically, Yeah, I'm willing to help you, but I don't want
2 anything there that's going to affect my case.

3 And I have no problem with them getting information, but I
4 do have a problem with them using that information in the open
5 case. That's why we're looking to suppress it in the open case.
6 They get into things like access to guns, drug dealing. The
7 co-D is talked about. All this stuff is talked about, which
8 would affect the open case.

9 THE COURT: Well, just on that point -- because I made a
10 note to myself. With respect to the suppression, I hear you
11 loud and clear with respect to voluntariness. And I'm familiar
12 with Edwards versus Arizona.

13 So, I am not making any rulings today with respect to the
14 admissibility of evidence in the event that I respectfully deny
15 your motion to suppress. That's understood.

16 MR. CONNORS: No, I understand that, your Honor. And if
17 you don't go along with my wishes here, then it will be another
18 motion to exclude. But I honestly think that this requires a
19 suppression in this case.

20 THE COURT: Well, stop right there. Let me focus in on
21 that. So, with respect to the very brief interview on
22 July 9th, ADA Lynch, concerning the question put by Trooper
23 Donovan as to whether or not Mr. Seme could possess the
24 cellphone in June, in and around the time of this alleged
25 murder, and what the number was, is the Commonwealth intending

1 to use that information in connection with the prosecution of
2 this case?

3 MR. LYNCH: Well, I'm going to suggest, Judge, that as far
4 as whether or not that was a violation of Miranda or issues
5 involving counsel, it's not really before the Court. But I only
6 assumed it's not before the Court because it's a statement that
7 I thought Counsel would want to rely upon based on the fact that
8 the phone was found next to his body. So, I only assumed he
9 wasn't challenging it because he wanted it to come in.

10 So, that being said, you know, it is not an admission.
11 It's actually a self-serving denial. So, technically it
12 probably wouldn't be something that would be acceptable under
13 the hearsay exception. So, that all --

14 THE COURT: Well, that's why I zeroed in on that.

15 MR. LYNCH: Yeah. So, I mean, I don't think that that's an
16 issue before the Court.

17 THE COURT: That's why I asked Attorney Connors if he's
18 challenging that particular exchange about the cellphone. It
19 sounds like he is -- or he isn't. I don't know.

20 MR. CONNORS: The exchange about the cellphone -- the
21 question was, "Do you have a cellphone? What's the number?"

22 And he says, "Well, I didn't have a cellphone."

23 THE COURT: Right.

24 MR. CONNORS: But he said he did use his boy's cellphone.
25 I mean, if there's a question at trial about whether or not a

1 cellphone is found that's my client's, then I think that it's
2 incumbent on them to prove that. And I think it's incumbent on
3 me to use whatever I can to, you know, deny it.

4 But I just think that if they are using -- if they're going
5 to try and use calls, cell calls to nail my client, then, you
6 know -- and a denial that he had use of a phone when they're
7 going to contend that he did have use of a phone, well, then I
8 would -- I would ask that that not be used.

9 THE COURT: I have no idea, and I'm certainly limited in my
10 knowledge of this case, whether or not a cellphone was
11 recovered; whether or not it was searched forensically; whether
12 or not it can be traced back to your client. I have no idea
13 what the evidence is.

14 I did hear that very brief exchange between Trooper Donovan
15 and the Defendant where, at the end of the discussion, he just
16 asked about whether or not he had a cellphone, what the number
17 was, and how do you correspond with folks when you are out? And
18 he denied having a cellphone. Then they terminated the
19 interview.

20 MR. CONNORS: Yeah. And I would ask that that statement be
21 suppressed and that exchange be suppressed.

22 THE COURT: All right. Let's focus on that. ADA Lynch?

23 MR. LYNCH: Well, I mean, we didn't really prepare for
24 that, to be honest, because that would be a whole different
25 situation altogether than just simply voluntariness. I mean, if

1 the Court says that statement should not be admissible as a
2 result of communications that occurred post arrest, you know, in
3 violation of Miranda or the right to counsel, you know, then I'm
4 going to suggest that doesn't prevent the Commonwealth, if they
5 find a cellphone next to Mr. Seme during this investigation, to
6 do whatever they want with it as it relates to this
7 investigation.

8 If that statement doesn't come in and that's what the Court
9 finds, that's fine. I guess that's -- if that's what Mr.
10 Connors wants.

11 THE COURT: I'm not taking any position about whether a
12 cellphone can be admissible or not.

13 MR. CONNORS: Yeah, I noticed --

14 THE COURT: And I left myself a note. I'm not making any
15 determination on the admissibility of evidence.

16 MR. LYNCH: Right.

17 MR. CONNORS: No, no, it's just the statement.

18 MR. LYNCH: So, if the Court's of the mindset that the
19 Commonwealth hasn't met their burden as it relates to that
20 statement, even though that issue really wasn't presented to the
21 Court, I'm not going to prevent the Court from making that
22 finding, as long as it's limited to that brief exchange about
23 whether he had a cellphone in June and what the number was.

24 THE COURT: All right. Well, that's an easy call for me
25 because there was no Miranda given. It didn't get that far.

1 And we have Edwards versus Arizona which clearly states that if
2 the police are in knowledge -- or knowledgeable about the
3 Defendant having counsel and counsel had advised them that they
4 don't -- that he, Mr. Seme, does not wish to speak to the police
5 because he's represented by counsel, then that further inquiry
6 by Trooper Donovan is outside the bounds of Edwards versus
7 Arizona.

8 And the exchange about whether or not he possessed a
9 cellphone in June of 2015, and what the cellphone's number was,
10 and how do you communicate with the outside world, and the
11 Defendant denying that he possessed a cellphone should be
12 suppressed.

13 MR. LYNCH: Okay.

14 THE COURT: Most respectfully.

15 MR. LYNCH: Understood.

16 THE COURT: Now, focusing on the July 9th, 2015 interview
17 that commenced at approximately 2:01 p.m., that's where I want
18 Attorney Connors to argue.

19 MR. CONNORS: Yes, your Honor. And again, the police were
20 fully aware that my client was represented by counsel; that
21 counsel said not to talk about this case; that they had given
22 him assurances during the interview that they were not going to
23 go anywhere near the open case.

24 I think that's exactly the words of the officer. We're not
25 going to go anywhere near that. And then he talks about the

1 co-D. He talks about access to guns. He talks about drug
2 dealing. He talks about things which, if they were to come in
3 at trial, I mean, they -- that goes way beyond helping the
4 Commonwealth to make their case, when the troopers knew that. I
5 mean, the trooper knew when he started talking about the co-D
6 that -- that that's not someplace they should have gone.

7 The trooper in going after what access he may have to
8 guns -- although the trooper may have been pointing in the
9 direction of Brockton, that is right on point as far as the case
10 that we have in front of us.

11 You know, it wasn't voluntary as far as my client is
12 concerned to give information which dealt with his open case.
13 He was there under the ruse of helping them, as he put into his
14 statement there, to help get drug dealers off the streets, and
15 not to give information that was going to be used in his case.

16 In fact, that was specifically something that he asked not
17 happen. That was specifically something that the officers told
18 him in various ways would not happen. And in the end, it's
19 exactly what did happen.

20 THE COURT: ADA Lynch.

21 MR. LYNCH: Judge, again I believe this was an issue
22 involving voluntariness; and that's what we should be focusing
23 on. If there were things that were elicited that were lawful
24 during this conversation and there was an issue with regards to
25 prior bad acts or something else, that would be appropriate in a

1 motion in limine. That's fine.

2 But as to voluntariness, Judge, I don't believe there was
3 anything in the tapes, which is really the best evidence here of
4 the different conversations that occurred that -- to the like
5 that the Defendant said, I don't want anything brought up that's
6 going to affect my case, or nothing to affect my case.

7 So, the representation was, We're not going to talk about
8 your case. If you want to talk about something else, we'll talk
9 about whatever you want. But we're not going to talk about your
10 case. And when you listen throughout the entire interview,
11 where it ever went from beyond what was being discussed
12 concerning Brockton to getting close to, you know, a particular
13 day in Barnstable, the officers avoided it. And they let him
14 rule the conversation.

15 So, when we're talking about voluntariness, Judge, I think
16 you need to look at the most recent cases that have come down as
17 a result of it, which I've cited in my memorandum. Counsel made
18 mention of the Tremblay case, which was, you know, a statement
19 about, Let's talk off the record. And then the Court in that
20 particular case said that was okay. The defense doesn't think
21 so, but the Court in that case said it was okay.

22 But looking at the other cases that now exist from about
23 that time, there's the Bay case and the Ortiz case that really
24 had egregious situations where there was just overwhelming
25 coercion put upon somebody to create their will to be overborne

1 so that they gave these statements that they probably would not
2 have given. You know, whether or not it's about talking about
3 their family or things of that nature, that's what voluntariness
4 is about.

5 So, when you have a situation where somebody initiates the
6 communication, says I want to come and talk to you, and then has
7 an intelligent conversation, clearly not under the influence of
8 drugs or alcohol, representing some involvement in education
9 past high school, showing some knowledge of the criminal justice
10 system and indicating that he's probably had some involvement
11 with DYS, and then responding appropriately to all the questions
12 that are being asked, and, you know, essentially guiding the
13 conversation, first talking about his friend in New Bedford, and
14 then what occurs in Brockton and then the persons that he knows
15 there, I think it's clear that this doesn't fall into the
16 category of Bay and some of these other cases that are so
17 egregious in their coercion that somebody's will was overborne.

18 So, if we're just talking about voluntariness about this
19 two-hour conversation, I am going to suggest the evidence is
20 clear that this was a voluntary communication. If there's
21 issues with regards to what substances about that later on could
22 be used at trial, that's a fight for another day.

23 But I would suggest the government has met its burden at
24 least in this stage to show that these statements were proper.
25 There is no issues involving Miranda that are being represented.

1 And again, we would suggest that this gentleman's will was not
2 overborne. He initiated the conversation, and the conversation
3 was proper and intelligent for the two-hour period that he spoke
4 to the police. So, I would ask that the motion be denied.

5 THE COURT: Anything else, Attorney Connors?

6 MR. CONNORS: Well, just that, you know, when we're talking
7 about voluntariness, we're talking about knowing and
8 intelligent. And as far as this goes, the officers made
9 assurances to my client, which I think caused him to make these
10 statements openly and freely as you saw with the assurances from
11 the officers as far as he was concerned that this would not be
12 used against him.

13 THE COURT: All right. I'm prepared to make some findings
14 and a ruling. I think it's fairly clear and fairly succinct as
15 to what I am focused on in terms of the motion that was put
16 before me today.

17 And that is, with respect to the issue of voluntariness as
18 it relates to the interview that commenced on July 9th, 2015
19 at approximately 2:01 p.m., which did take approximately one
20 hour and 55 minutes to conduct, it was done within the strict
21 confines of Commonwealth versus DiGiambattista. I saw no lapses
22 in the tape that would give me any cause for concern as to a
23 so-called DiGiambattista violation.

24 I find that Mr. Seme respectfully requested the interview.
25 So, he was the initiator of the interview by virtue of the

1 so-called request form. And that was admitted as Exhibit 1.

2 I also find that he waived his Miranda rights; that they
3 were scrupulously given. A copy of the rights form was appended
4 as an exhibit here. I think it's Exhibit 5. And he was advised
5 of his Miranda rights. The police told him that they could make
6 no promises.

7 And the detective, Detective Butler, was the primary person
8 who conducted the interview, assisted by Trooper Donovan. And
9 he basically on two occasions on July 9th decided that he
10 wanted to speak to the police because he stated, There are
11 people on the street that there shouldn't be on the street. And
12 then, there was the ensuing conversation that lasted about two
13 hours.

14 So, in the present matter, in advance of the meeting, I
15 find that this Defendant requested to speak to the police. The
16 request was made in writing. It was memorialized again by an
17 audio and video recording under Commonwealth versus
18 DiGiambattista.

19 So, I made notes; and I find that the police clearly
20 advised the Defendant that they were making no promises to him;
21 that he should steer clear of any comment or testimony that
22 could implicate him or come close to the case at hand, he being
23 charged with the serious offense of murder.

24 He was 19 years old at the time of the interview. He
25 appeared to be fully lucid. He was not under the influence of

1 alcohol or drugs. There was no suggestion that he was. He had
2 been in custody for approximately 19 days. His interactions
3 with the police and his response to their questions were
4 appropriate. It appeared that he understood English, and he
5 appeared educated and intelligent.

6 At one point, I even made a note that he said that he took
7 classes at Massasoit College. He was in custody, of course, at
8 the time at the Barnstable House of Correction; but there was no
9 evidence suggesting that the manner of the interview or the
10 setting of the interview was so-called overly coercive. No one
11 raised their voice. No one pounded the table. Nobody indicated
12 to him that he must answer a particular question.

13 The ensuing discussion, which again lasted about two hours,
14 talked about the illicit drug and gun activities, primarily in
15 Brockton. The Defendant expressed concern about the safety of
16 his girlfriend and his mother. And it didn't appear that there
17 was any chicanery, trickery or deception employed by the police
18 with respect to the conduct of the interview.

19 So, certainly I understand the law. And under the totality
20 of the circumstances test, the Court should consider all
21 relevant circumstances surrounding the interrogation and the
22 individual characteristics and conduct of a Defendant during the
23 course of such an evening.

24 So, the relevant factors include, but aren't limited to, of
25 course, promises and inducements, the Defendant's conduct, his

1 age, his education, his emotional stability, his experience with
2 the criminal justice system, his physical and mental condition
3 and whether or not the Defendant was the initiator of the
4 discussion that took place, the details of the interrogation,
5 and the recitation and strict adherence to the so-called Miranda
6 warnings.

7 So, I find in this case that there was no impropriety with
8 respect to the manner in which the interview was conducted; and
9 that the relevant factors point to me that under the current
10 status of the law, which is that the test for voluntariness of a
11 statement is whether in light of the totality of the
12 circumstances surrounding the making of the statement that the
13 will of the Defendant was quote "overborne" to the extent that
14 the statement was not the result of a free and voluntary act.

15 In this particular case, citing Commonwealth versus Souza,
16 Commonwealth versus Raymond, Commonwealth versus Jackson,
17 Commonwealth versus Davis, I find that the statement was
18 voluntary. It was the product of a rationale, intelligent and
19 free and voluntary act on the part of this Defendant.

20 And most respectfully, I'm going to deny the motion to
21 suppress the statement contained in Exhibit 4, the so-called
22 second interview that took place on July 9th, 2015 at
23 approximately 2:01 p.m. and terminating an hour and 55 minutes
24 later.

25 So, my findings and rulings are a part of the record. I am

1 going to allow the motion to suppress with respect to the
2 statements contained in Exhibit 3 as they relate to an inquiry
3 about the cellphone.

4 And I made that clear at the beginning of my recitation;
5 that the statements about the cellphone, asking if he had a
6 cellphone and how to communicate with the outside world, those
7 are respectfully suppressed.

8 So, allowed in part, denied in part. My findings are part
9 of the record. Anything else, Attorney Connors?

10 MR. CONNORS: No, your Honor.

11 THE COURT: ADA Lynch?

12 MR. LYNCH: No, sir.

13 THE COURT: So, I'll mark the motions that I -- Attorney
14 Connors, might I suggest that you take the original motion and
15 just scratch out 19 and write in 9 and initial it so the Clerk
16 can change the docket.

17 MR. CONNORS: I believe on my copy, I took the 1 and made
18 it a 0.

19 THE COURT: All right. So, if you don't mind, just take it
20 so we have -- and then I'm going to ask the Clerk to docket it
21 as July 9th so we don't have any problem with the docket.
22 Because on the docket right now, it says July 19th. All
23 right?

24 MR. CONNORS: Yes.

25 THE COURT: What's the next date in this case?

1 MR. LYNCH: We have been having a lot of discussions
2 concerning discovery. The Commonwealth did present a good
3 amount of discovery in the way of disks and some other
4 information just recently.

5 Mr. Connors has been very specific about some of the things
6 that he is looking for. We're still waiting on a GSR kit. So,
7 I would ask for a date in January, however the Court wants to
8 make it.

9 THE COURT: All right. I just want to have a next event so
10 we're required to -- all right. What date is convenient for you
11 in January, Attorney Connors?

12 MR. CONNORS: I'm looking at January the 19th or the 20th?

13 THE CLERK: The 19th is fine.

14 THE COURT: All right. January 19th.

15 THE CLERK: Pretrial?

16 THE COURT: Thank you for your appearance here today.

17 (Whereupon proceedings conclude.)
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C E R T I F I C A T I O N

I, DANIEL E. HORGAN, OFFICIAL COURT MONITOR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE FTR RECORD OF THE COURT PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

I, DANIEL HORGAN, FURTHER CERTIFY THAT THE FOREGOING IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT'S DIRECTIVE ON TRANSCRIPT FORMAT.

I, DANIEL HORGAN, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN; AND FURTHER, THAT I AM NOT FINANCIALLY, NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

DANIEL HORGAN, OFFICIAL COURT MONITOR
PROCEEDINGS TAKEN DIGITALLY AND PRODUCED THROUGH COMPUTER AIDED
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Daniel E. Horgan

2/22/19

(SIGNATURE)

(DATE)

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